

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA**

**IN THE MATTER OF
THE REQUEST FOR HEARING BY**

**KRISTIN GOESER RITCHIE
Pharmacy**

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12-2178

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER**

STATEMENT OF THE CASE

On April 30, 2012, Kristin Goeser Ritchie (Appellant) submitted a Nebraska Pharmacist Application to Practice Pharmacy based on reciprocity with the State of South Dakota. On July 26, 2012, the Nebraska Department of Health and Human Services, Division of Public Health (the Department) denied Appellant's application. On July 31, 2012, Appellant filed a request for hearing to appeal the Department's decision.

SUMMARY OF THE HEARING

This matter came on for hearing before Susan Strohn, Hearing Officer, on September 18, 2012, in Lincoln, Nebraska. Appearing were Appellant Kristin Goeser Ritchie; and Lisa K. Anderson on behalf of the Department. In addition to witness testimony, nine (9) exhibits were offered and received into evidence.

FINDINGS OF FACT

1. Proper notice of this hearing was provided to the parties.
2. On April 30, 2012, Appellant submitted a Nebraska Pharmacist Application to Practice Pharmacy based on reciprocity with the State of South Dakota. In the Application, Appellant was asked in Section III, question no. 2: "Have you been convicted of a misdemeanor?" Appellant checked the response box answering "No." In Section III, question no. 3, Appellant was asked: "Have you been notified of any charges, complaints or other actions filed against you by any criminal prosecution authority?" Appellant checked the response box answering "No." Appellant attested to the truth of her responses in Section F, and that all responses were "true and complete." (Ex. 1.) The Application also stated "[i]n order for your application to be considered complete, you MUST also submit the following documents:

* * *

5. Conviction information: If you have been convicted of a felony or

misdemeanor, you must submit:

- (1) A copy of the court record, which includes charges and disposition;
- (2) A letter of explanation addressed to the Nebraska Board of Pharmacy from the applicant regarding the events leading to the conviction (what, when, where, why) and a summary of actions you have taken to address the behaviors/actions related to the convictions....

(Ex. 1.)

3. On April 30, 2012, Appellant submitted, in connection with her Nebraska Pharmacist Application, her completed National Association of Boards of Pharmacy (NABP) Official Application for Transfer of Pharmacy License to the State of Nebraska. In the NABP Application, Appellant was asked on page 3: "Have you ever been charged or convicted (including a nolo contendere plea or guilty plea) of a felony or misdemeanor (other than minor traffic offenses) whether or not sentence was imposed, suspended, expunged, or whether you were pardoned from any such offense?" Appellant answered "No." (Ex. 2.) Appellant also completed the NABP Application's final section, and signed under oath before a Notary Public, the following statement:

Affidavit (Must be completed)

To prove any of the information presented in this application, including but not limited to character, education, and practical experienced claimed, I will submit a certified copy of the required documents....

I, Dr. Kristen L. Ritchie, under oath, hereby swear or affirm that I have read the foregoing paragraphs, and the information therein is complete, true, and correct. I understand that any false statements made by me in this Application may be punishable by law.

(Ex. 2.)

4. On April 30, 2012, the Department performed a background check and obtained information of a driving under the influence (DUI) conviction not disclosed by Appellant from the County Court of Douglas County, Nebraska, on May 3, 2003. (Ex. 3.)
5. On April 30, 2012, the Department contacted Appellant and requested that Appellant provide court documentation together with an explanation of why Appellant had not disclosed the DUI conviction on her Applications. (Ex. 4.) Appellant complied and sent a letter of explanation to the Board of Pharmacy. In that letter, Appellant acknowledged that she failed to provide complete and accurate information, and stated: "it was a misunderstanding on my end as I thought I was informed that after a certain amount of time a misdemeanor fell off your record. After re-reading the wording on both the Nebraska and NABP applications, it is clear that I should have listed my offense." (Ex. 5.)

6. On July 26, 2012, the Department notified Appellant that her Application to Practice Pharmacy in Nebraska was denied. (Ex. 7).
7. On July 31, 2012, Appellant filed a request for hearing to appeal the Department's decision. (Ex. 8).
8. Appellant had previously, and repeatedly, disclosed the DUI conviction to the NABP, the State of South Dakota, the Board of Pharmacy in South Dakota, for internship licensing, for board licensing, and for multiple residency applications.

CONCLUSIONS OF LAW

Appellant testified that she had been told in the course of either her probation or alcohol education that the DUI conviction would "fall off" her record after five years, and believed after nine years the conviction was no longer on her record. She did not read the Applications' questions carefully and believed she did not have to disclose things that were "no longer on her record." Appellant's interpretation of the questions was not consistent with the plain language of the questions and lacked detail and accuracy, which is an integral function of a pharmacist's duties. No parts of the mis-answered questions ask about only crimes that "you believe are on your record." The questions seek whether Appellant had "*been convicted of a misdemeanor?*" and whether Appellant has "*been notified of any charges ... filed against you by any criminal prosecution authority?*" The lack of attention given to the Applications' questions and instructions was unprofessional.

Appellant acknowledged her error and stated that the better course was to contact DHHS and inquire whether a conviction that she believed was "no longer on her record" was required to be disclosed. In hindsight, Appellant admits that the wording of the questions made it clear that affirmative responses were required in her case. The conviction of an alcohol-related offense was rationally related to the practice of Pharmacy and constituted a material fact that required disclosure. However, while I find the Appellant's lack of attention to detail in completion of the Applications was inattentive and careless, I do not find that the Department proved by clear and convincing evidence that Appellant's responses constituted intentional misrepresentations for the purpose of attempting to procure a credential. Neb. Rev. Stat. §38-178(1). Under §38-178, a credential to practice "may be denied, refused

renewal, or have other disciplinary measures taken against it" for unprofessional conduct as defined in §38-179, which defines unprofessional conduct [§38-178(24)].

ORDER


IT IS THEREFORE ORDERED that the Department's decision to deny Appellant's Nebraska Pharmacist Application to Practice Pharmacy based on reciprocity with the State of South Dakota is REVERSED, to the extent that the Department is instructed to issue Appellant a six-month probationary license on the following probationary conditions:

1. Defendant shall complete within six (6) months a Department-approved ethics course applicable to Pharmacy.
2. Defendant shall submit written notification to the Department within seven (7) days of any change in employment, employment status, residence or telephone.
3. All reports, notices and other documentation requested by the Department shall be provided using report forms provided by the department. All such requests shall be rationally related to this disciplinary action and probation.
4. Defendant shall promptly respond to all requests and inquiries by the Department concerning defendant's compliance with the terms of probation. Defendant shall obey all applicable laws and rules and regulations regarding her professional license.
5. Defendant shall provide notice to any employer of this disciplinary action and the terms of probation. Notification shall include providing the employer with a copy of the discipline order signed by the Chief Medical Officer.
6. Defendant shall also notify the licensing authorities in any other states where Defendant has or obtains an active license of the existence of this disciplinary action and shall provide to such other state licensing authorities a copy of the discipline order by the Chief Medical Officer.
7. Written confirmation of notification to the Defendant's employer and any other state licensing authorities shall be provided by Defendant to the Department within thirty (30) days of the entry of the discipline order by the Chief Medical

Officer and within thirty (30) days of any subsequent changes of out-of-state licensure.

8. Defendant shall pay all costs of this action.
9. In the event defendant violates any of the above terms of probation, the Chief Medical Officer, after motion by the Attorney General and a hearing, may take further disciplinary action, including revocation of the Defendant's probationary license.

DATED this 19 day of October, 2012.



Joann Schaefer, M.D.
Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services

CERTIFICATE OF SERVICE

The undersigned certifies that on the 19th day of October, 2012, a copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** was sent by certified United States mail, postage prepaid, to Kristin Goesser Ritchie, 2730 NW Dahlia Drive, Lincoln, NE 68524 and by email to Lisa K. Anderson, Assistant Attorney General, at agohealth@nebraska.gov.



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